

Notice to Licensed Wholesalers and Unclassified Acquirers of Cigarettes and “Roll-Your-Own” Tobacco

Issued under Public Act 327 of 1993, as amended.

The amendments to Public Act 327 of 1993, which took effect on August 1, 2002, place certain responsibilities on tobacco product manufacturers who are not participating in the Master Settlement Agreement (NPM’s) and on licensed Wholesalers and Unclassified Acquirers of cigarettes and “Roll-Your-Own” tobacco, which may impact your business operations.

The amendments to Public Act 327, in addition to increasing the tax on cigarettes and other tobacco products, support enforcement of Public Act No. 244 of 1999.

Key components of the new law that directly affect licensed Wholesalers and Unclassified Acquirers are:

- Mandatory filing of Schedule K’s.
- Requirement that Schedule K’s be filed for all reporting periods subsequent to December 27, 1999.
- Discretionary penalties for failure to file Schedule K’s, or filing inaccurate Schedule K’s, which can include up to a \$1,000 fine per violation, prohibition from obtaining cigarette stamps, and license revocation.
- Beginning May 1, 2003, anyone purchasing cigarettes and “Roll-Your-Own” tobacco from an NPM must obtain the required certification from that NPM, or purchases of tobacco products from that NPM are prohibited.
- Requirement to check certifications received from NPM’s against the Department’s Web site list, and report non-matches within 10 business days.
- Authorization for the Department to seize or confiscate from any person cigarettes, including “Roll-Your-Own” tobacco, acquired from an NPM who has not provided required certification.

Public Act 244, commonly referred to as the ‘Model Act’, requires that tobacco product manufacturers either participate in the tobacco Master Settlement Agreement (MSA), or, as NPM’s, deposit funds by April 15th of each year into qualified escrow accounts based on the number of units sold within Michigan in each calendar year.

The states that have signed the MSA are responsible for diligently enforcing their ‘Model Act’, and failure to do so could result in a substantial reduction of the funds allocated to the state from funds deposited by the participating manufacturers under the MSA.

Following is a more detailed summary of the amendments:

- Licensed Wholesalers and Unclassified Acquirers of cigarettes and “Roll-Your-Own” tobacco are required to report their acquisitions of those products that are manufactured by NPM’s during each reporting month. Acquisitions, as well as returns to the NPM or exports to other states, are reported on Schedule K. If a licensed Wholesaler or Unclassified Acquirer has not already submitted Schedule K’s for periods subsequent to December 27, 1999 they are required to file the schedules for

lapsed periods within 60 days. Schedule K’s must be filed even if there are no transactions to report.

- Failure to file Schedule K, or filing inaccurate schedules, may result in 1 or more of the following:
 1. Assessment of a penalty of up to \$1,000.00 per violation.
 2. Prohibition from obtaining cigarette stamps from the Department.
 3. License revocation.
- An NPM is required to certify to the Department annually that it is not participating in the MSA, and that it has established a qualified escrow account and deposited funds as required under Act 244 of 1999. Copies of the Certification are to be provided by the NPM to the Attorney General and anyone to whom they sell their cigarettes (including “Roll-Your-Own” tobacco) for resale in Michigan.
- An NPM who has not provided the Certification is prohibited from making sales of cigarettes, including “Roll-Your-Own” tobacco, in Michigan, directly or through an intermediary.
- No one may purchase tobacco products in Michigan, or for resale in Michigan, from an NPM who has not provided the Certification.
- The Department will post on its Web site a list of NPM’s who have provided the required Certification. The Department will also post on its Web site the names of NPM’s who have committed a second or subsequent knowing violation of Act 244 of 1999, or against whom the Department has a judgement. 30 days after a name is posted the Department may seize from any person cigarettes acquired or manufactured by that NPM.
- If a licensee receives Certification from an NPM who does not appear on the Department’s Web site, the licensee must provide the Department with a copy within 10 business days.
- If, effective May 1, 2003, an NPM has not provided the required Certification, the Department may seize or confiscate from any person cigarettes, including “Roll-Your-Own” tobacco, acquired from or manufactured by that NPM.
- The Department may impose a civil fine of up to \$1,000.00 for violations of these provisions, in addition to fines or penalties imposed under Act 244 of 1999.

Some of these provisions may affect your customers. It would be a valuable service to advise them of the amendments.

If you have any questions, contact Technical Services at (517) 636-4230.